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Dated: December 18, 2009
Electronic Signature for Sharon M. Sintich: /Sharon M. Sintich/

Docket No.: 01017/40451C
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Manfred Brockhaus et al.

Confirmation No.: 5613

Application No.: 08/444,791

Art Unit: 1644

Filed: May 19, 1995

Examiner: R. B. Schwadron

For: HUMAN TNF RECEPTOR

RESPONSE TO RESTRICTION REQUIREMENT WITH TRAVERSE

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is a response to the Restriction Requirement mailed November 25, 2009. The Examiner required election of one of the following species: pCD4Hy1 vector and pCD4Hy3 vector. Applicants hereby elect the species of pCD4Hy1 for continued examination, with traverse. All of the pending claims read on the elected species. Claims 148, 149, 217, 218, 226, 227, 236, 237, 247, 248, 256 and 257 particularly recite the pCD4Hy1 vector, while all other claims are generic in regards to the vector.

Applicants traverse this restriction requirement as untimely because claims reciting the two vectors were pending in this application since December 9, 2004, and the Examiner has mailed a number of restriction requirements since that date. In addition, if the species are few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the Examiner must examine all species. See M.P.E.P. § 803.02. In this case, search and examination based on both vector species would not be a serious burden on the Examiner. Furthermore, if the elected species and/or a generic claim is found to be patentable, the prior art search and examination must be extended to the other species. See M.P.E.P. §§ 803.02 and 809.02(a).

For these reasons, Applicants believe that the most expeditious method of examination is for the Examiner to examine the two vector species simultaneously. Applicants request that the restriction be withdrawn.

Dated: December 18, 2009

Respectfully submitted,

By /Sharon M. Sintich/
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